IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 2231 of 2005

Between:

St. Joseph's Educational Society, Kurnool, Rep. by its Secretary and Treasurer, C. Rojamma, W/o. Late Chittaranjan.

..... PETITIONER

AND

1 The Kurnool Municipal Corporation, Kurnool Rep. by its Commissioner,
2 The District Collector, Kurnool District, Kurnool.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to declare the proceeding B.A.No. 112/2004/G2 dt. 17-11-2004 issued by the 1st respondent herein as illegal and unjust and direct the 1st respondent herein to grant permission for construction of building pursuant to the application dt. 6-7-2004 in the light of the order in O.P.No. 107/1984 dt. 31-8-1989 on the file of the District Court cum Special Tribunal under A.P. Land Grabbing (Prohibition) Act, by issuing appropriate Writ of Mandamus or direction and pass such other order or orders as this Hon'ble High Court deems fit and proper.

Counsel for the Petitioner : MR. M.V.S.SURESH KUMAR

Counsel for the Respondent No.1 : MR. S.I.NEWTON

Counsel for the respondent No.2 : G.P. for Revenue.

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.2231 OF 2005

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ORDER :

The writ petitioner is a society registered under the Societies Registration Act. It is stated that the petitioner has purchased the land to an extent of Ac.1.25 cents situated in Sy.No.140/2A of Kurnool under a Registered Sale Deed, dated 5-3-2004 from the legal representatives of late K.Lakshman Rao Naidu for the purpose of construction of a primary school building and for expansion of the activities of the petitioner school. Thereafter, on 6-7-2004 the petitioner made an application to the first respondent Municipal Corporation seeking permission for construction of a building on the said land. However, the first respondent by endorsement dated 4-8-2004 returned the plans submitted by the petitioner for want of clarification of District Collector, Kurnool regarding the ownership of the site purchased by the petitioner since the Mandal Revenue Officer, Kurnool has certified that the said site

is 'Village Site Poramboke'. The petitioner was requested to resubmit the plans after receipt of the clarification from the District Collector. The petitioner states that the then Tahsildar, Kurnool filed O.P.No.107 of 1984 on the file of the District Judge-cum-Special Tribunal, Kurnool under the provisions of the A.P. Land Grabbing (Prohibition) Act, 1982 claiming that the said land in Sy.No.140/2A is classified as 'Village Site Poramboke' and seeking a declaration that late K.Lakshmana Rao Naidu was a land-grabber. Pending the said proceedings, K.Lakshmana Rao Naidu died and the vendors of the petitioner were brought on record as legal representatives. The Special Tribunal, having heard both the parties, dismissed O.P.No.107 of 1984 by order dated 31-8-1989 holding that the evidence placed on record clearly shows that the respondents therein and their predecessors were in exclusive possession and enjoyment of the land in question since time immemorial in their own right. The said order of the Special Tribunal has become final. In the circumstances, the petitioner made a representation dated 1-11-2004 bringing the said fact to the notice of the 1st respondent and requesting to sanction the building permission as sought in their application dated 6-7-2004. In response, the first respondent vide proceedings dated 17-11-2004 informed the petitioner that the clarification sought from the District Collector was still awaited and therefore the petitioner has to resubmit the plans only after receipt of no objection certificate from the District Collector, Kurnool for taking further action. Aggrieved by the said action of the 1st respondent, this writ petition is filed seeking a declaration that the proceedings of the 1st respondent dated 17-11-2004 are arbitrary and illegal.

The contention of the petitioner is that since there is no provision under the A.P. Municipalities Act to refer any application seeking permission for construction to the District Collector, the 1st respondent is not justified in returning the plan submitted by the petitioner on the ground that the clarification is awaited from the District Collector. At any rate, since O.P.No.107 of 1984 filed by the Government against the vendors of the petitioner under the provisions of the A.P. Land Grabbing (Prohibition) Act was already dismissed holding that the vendors were in exclusive possession and enjoyment of the land in question since times immemorial in their own right, the first respondent is not at all justified in referring the matter for further clarification with regard to title.

On behalf of the 1st respondent, a counter-affidavit has been filed stating that under Section 429 (1) (a) of the A.P. Municipalities Act, 1965, the Commissioner of Municipal Corporation may ask the applicant to submit a copy of the title deed of the land duly attested by the Gazetted Officer of the Government together with an Urban Land Ceiling Clearance Certificate or as the case may be as referred in Section 388 of the Hyderabad Municipal Corporation Act, 1955. It is also stated that the certificate issued by the Mandal Revenue Officer, Kurnool dated 19-6-2004 submitted by the petitioner along with the building application shows that the land in Sy.No.140/2 purchased by the petitioner is classified as 'Village Site Poramboke' as per the revenue records. Hence, the petitioner was informed to resubmit the plans after receipt of clarification from the District Collector, Kurnool regarding the ownership of the land. It is also stated that all the village poramboke lands are vested with the Government and therefore the 1st respondent has rightly sought for a clarification from the 2nd respondent District Collector and since such clarification was still awaited the application sent by the petitioner was returned under the impugned proceedings which cannot be held to be arbitrary or illegal.

I have heard the learned Counsel for both the parties and perused the material on record.

Admittedly, the order of the Special Tribunal under the A.P Land Grabbing (Prohibition) Act, Kurnool in O.P.No.107 of 1984 dated 31-8-1989 has become final. In the said order, a finding was recorded by the Special Tribunal that the legal representatives of late K.Lakshmana Rao Naidu i.e., the vendors of the petitioner and the predecessors in title were in exclusive possession and enjoyment of the land in question since times immemorial in their own right. The said finding recorded by the Special Tribunal is binding on the respondents. In the circumstances, the objection raised by the 1st respondent as to the title in respect of the land in question appears to be untenable. The learned Counsel for the petitioner while placing reliance upon a decision of this Court in HYDERABAD POTTERIES PRIVATE LIMITED v. COLLECTOR, HYDERABAD vehemently

contended that since admittedly the petitioner is in possession having purchased the land under a registered sale deed, it is not open to the 1st respondent to refuse building permission in the absence of any material to substantiate the objection that the land is classified as 'Government Poramboke Land'. In the above case, having considering an identical question, this Court held as under:

> *"… … The Commissioner is required to make pragmatic assessment of the material available on record and decide the question of prima facie title and lawful possession of the applicants. The applications for grant of permission cannot be rejected solely on the basis of TSLR entries. After all, the decision to grant permission itself would not confer any title upon the applicant, nor it would take away the rights of the objector(s), whether the Government or any individual, for asserting their right, title and interest in the land in respect of which permission has been granted to law. Similarly, the Commissioner is not entitled to decide any disputed questions of title or the ownership. All that the Commissioner is required to do is to find out prima facie title and lawful possession of the applicant and obviously such consideration is confined to only for the purposes of granting permission and nothing more."*

It is brought to my notice that the said decision of the learned Single Judge was confirmed in the Writ Appeal. In the light of the settled legal principles, I am of the view that the 1st respondent was not justified in returning the application of the petitioner on the ground that No Objection Certificate from the District Collector was still awaited.

Accordingly, the Writ Petition is disposed of granting liberty to the petitioner to resubmit the application within a period of two weeks from today, in which event the 1st respondent is directed to consider the same in the light of the finding recorded in O.P.No.107/1984, dated 31-8-1989 on the file of the District Court-cum-Special Tribunal under the A.P. Land Grabbing (Prohibition) Act and without insisting on production of No Objection Certificate from the 2nd respondent and to pass appropriate orders in accordance with law as expeditiously as possible preferably within a period of four weeks from the date of receipt of this order.

The Writ Petition is accordingly disposed of. No costs.

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9th June, 2005.

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To

1 The Commissioner, Kurnool Municipal Corporation, Kurnool.

2 The District Collector, Kurnool District, Kurnool.

3. Two CD copies.

4. Two CCs to G.P. for Revenue, High Court of AP Bldgs, Hyderabad (OUT).